

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BONA FIDE CONGLOMERATE,
INC.,

Plaintiff,

v.

SOURCEAMERICA, et al.,

Defendants.

CASE NO. 14cv0751-GPC-DHB

ORDER:

**(1) GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
EX PARTE APPLICATION;**

[Dkt. No. 194.]

**(2) MODIFYING HEARING DATE
AND BRIEFING SCHEDULE ON
PLAINTIFF'S MOTION FOR
CERTIFICATION UNDER 28
U.S.C. § 1292(b)**

[Dkt. Nos. 195, 198.]

Before the Court is Plaintiff Bona Fide Conglomerate, Inc.'s ("Plaintiff") *ex parte* application to: (1) stay all proceedings in this action pending resolution of Plaintiff's motion for certification of interlocutory appeal under 28 U.S.C. § 1292(b); or, alternatively (2) continue Plaintiff's February 5, 2015 deadline to file a second amended complaint. (Dkt. No. 194.) The Defendants have filed a joint opposition. (Dkt. No. 199.) For the following reasons, the Court **DENIES** Plaintiff's *ex parte* application for a stay, but **GRANTS** Plaintiff's *ex parte* application to continue the deadline to file a second amended complaint.

BACKGROUND

Plaintiff brings this civil antitrust action against SourceAmerica and various non-profit and for-profit entities for allegedly rigging the process through which service

1 providers may compete for government contracts through the federal “AbilityOne
 2 Program.” (Dkt. No. 128 ¶¶ 1-2, 6.) On January 6, 2015, this Court issued an order
 3 (“Order”) granting in part and denying in part Defendants’ motions to dismiss
 4 Plaintiff’s first amended complaint, dismissing Plaintiff’s antitrust claims without
 5 prejudice, and granting Plaintiff thirty days, until February 5, 2015, to file a second
 6 amended complaint. (Dkt. No. 189.) On February 3, 2015, Plaintiff filed a motion
 7 seeking to certify the Court’s Order for interlocutory appeal under 28 U.S.C. § 1292(b),
 8 which the Court set for a hearing on April 10, 2015. (Dkt. Nos. 195, 198.) Plaintiff
 9 also concurrently filed the instant *ex parte* application to: (1) stay all proceedings in
 10 this action pending resolution of Plaintiff’s § 1292(b) motion; or, alternatively
 11 (2) continue Plaintiff’s February 5, 2015 deadline to file a second amended complaint.¹
 12 (Dkt. No. 194.) Defendants filed a joint opposition to Plaintiff’s *ex parte* application.²
 13 (Dkt. No. 199.)

14 LEGAL STANDARD

15 “A district court has inherent power to control the disposition of the causes
 16 on its docket in a manner which will promote economy of time and effort for itself,
 17 for counsel, and for litigants.” *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir.
 18 1972) (citation and internal quotation marks omitted). When considering whether
 19 to stay proceedings, courts should consider “the possible damage which may result
 20 from the granting of a stay, the hardship or inequity which a party may suffer in
 21 being required to go forward, and the orderly course of justice measured in terms of
 22 the simplifying or complicating of issues, proof, and questions of law which could
 23 be expected to result from a stay.” *Id.* (citation and internal quotation marks
 24 omitted).

25
 26 ¹On January 27, 2015, Plaintiff contacted Defendants regarding its stay request.
 27 (Dkt. No. 194-1 ¶ 4.) On January 29, 2015, Defendants declined to stipulate to a stay.
 (Id.)

28 ²The opposition excludes Defendant Corporate Source, Inc. because its counsel
 was unreachable due to an ongoing trial. (Dkt. No. 199 at 1.)

1 If the prescribed time period has not expired, a party must show “good cause”
2 for an extension. Fed. R. Civ. P. 6(b)(1)(A). “[R]equests for extensions of time
3 made before the applicable deadline has passed should ‘normally . . . be granted in
4 the absence of bad faith on the part of the party seeking relief or prejudice to the
5 adverse party.’” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir.
6 2010) (citation omitted).

7 DISCUSSION

8 Plaintiff contends that this Court should stay proceedings pending resolution
9 of its § 1292(b) motion because otherwise it will face the “Hobson’s choice” of
10 either: (1) complying with the Court’s Order and filing a second amended complaint
11 that will supersede the first amended complaint, thereby waiving appellate review of
12 the Order and mooted the § 1292(b) motion; or (2) risking involuntary dismissal if
13 it disobeys the Order. (Dkt. No. 194 at 2-4.) Alternatively, based on the same
14 reasons, the Plaintiff requests that the Court continue the February 5, 2015 deadline
15 to file a second amended complaint until 15 days after the Court enters an order on
16 Plaintiff’s § 1292(b) motion. (*Id.* at 4-5.)

17 Defendants respond that this Court should deny Plaintiff’s *ex parte*
18 application for three reasons: (1) the Court will likely deny Plaintiff’s § 1292(b)
19 motion; (2) Plaintiff does not face a “Hobson’s choice” because under the Federal
20 Rules of Civil Procedure Plaintiff can either timely file a second amended complaint
21 or announce that it will stand on the first amended complaint and request entry of
22 final judgment pursuant to Rule 54(b); and (3) Plaintiff’s timing is suspect because,
23 even though the Court gave Plaintiff thirty days to amend, it waited until January 27
24 to approach Defendants regarding the stay request, waited until February 3 to file its
25 *ex parte* application, and did not file its *ex parte* application until the same day that
26 Defendant SourceAmerica’s Answer was due which prevented SourceAmerica from
27 seeking a continuance. (Dkt. No. 199 at 2-3.)

28 The Court concludes that Plaintiff has not shown that a stay is warranted, but

1 that there is good cause to grant Plaintiff an extension for filing its second amended
 2 complaint. Plaintiff filed their request before the deadline, there is no evidence of
 3 bad faith by Plaintiff, and Defendants do not contend they will be prejudiced.
 4 Moreover, an extension will alleviate any potential hardship to Plaintiff regarding
 5 its § 1292(b) motion.

6 Accordingly, the Court **DENIES** Plaintiff's request for a stay, but **GRANTS**
 7 Plaintiff's request to continue the deadline for filing a second amended complaint
 8 until 15 days after the Court enters an order on Plaintiff's motion for certification of
 9 interlocutory appeal under 28 U.S.C. § 1292(b).

10 However, the Court is concerned about delaying this action for too long in
 11 order to consider Plaintiff's § 1292(b) motion. Therefore, the Court modifies the
 12 hearing date on Plaintiff's Motion for Certification of Order for 28 U.S.C. § 1292(b)
 13 Interlocutory Appeal and Stay of Proceedings (Dkt. No. 195) to **March 6, 2015** at
 14 1:30 p.m. Defendants shall file a response on or by **February 20, 2015**. Any reply
 15 shall be due by **February 27, 2015**.

16 **CONCLUSION AND ORDER**

17 For the foregoing reasons, **IT IS HEREBY ORDERED:**

- 18 (1) the Court **DENIES** Plaintiff's *ex parte* application to stay all
 19 proceedings in this action pending resolution of Plaintiff's motion for
 20 certification of interlocutory appeal under 28 U.S.C. § 1292(b), but
 21 **GRANTS** Plaintiff's *ex parte* application to continue the deadline for
 22 filing a second amended complaint until 15 days after the Court enters
 23 an order on Plaintiff's motion for certification of interlocutory appeal
 24 under 28 U.S.C. § 1292(b) (Dkt. No. 194);
- 25 (2) the Court **MODIFIES** the hearing date on Plaintiff's Motion for
 26 Certification of Order for 28 U.S.C. § 1292(b) Interlocutory Appeal
 27 and Stay of Proceedings (Dkt. No. 195) to **March 6, 2015** at 1:30 p.m.
 28 Defendants shall file a response on or by **February 20, 2015**. Any

reply shall be due by **February 27, 2015.**

DATED: February 4, 2015